

## REMARKS

This Amendment is submitted in reply to the Non-Final Office Action mailed on February 27, 2009. No fee is due in connection with this Amendment. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 0112701-00704 on the account statement.

Claims 1-30 are pending in this application. In the Office Action, Claims 3-21 and 25-30 are objected to. Claim 2 is rejected under 35 U.S.C. §112 second paragraph. Claim 1, 2 and 22-24 are rejected under 35 U.S.C. §102(b). In response, Claims 1 and 23 have been amended, Claims 2-21 and 24-30 have been canceled without prejudice or disclaimer and Claims 31-55 have been newly added. The amendments do no add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be reconsidered and withdrawn.

In the Office Action, Claims 3-21 and 25-30 are objected to as being dependent upon a rejected base claim. The Patent Office asserts, however, that the claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See, Office Action, page 3, lines 3-6. Accordingly, Applicants have newly added Claims 31-55, which contain the subject matter of originally filed and now canceled Claims 3-21 and 24-30. Specifically, Claim 31 represents the subject matter of originally filed Claims 1 and 3, Claims 32-49 represent the subject matter of originally filed Claims 4-21, Claim 50 represents the subject matter of originally filed Claims 23-25, Claims 51-53 represent the subject matter of originally filed Claims 26-28, Claim 54 represents the subject matter of originally filed Claims 23 and 29, and Claim 55 represents the subject matter of originally filed Claim 30. The new claims are at least supported by the originally filed claims. As such, Applicants respectfully submit that the present claims are in position for allowance.

In the Office Action, Claim 2 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that there is no antecedent basis for the “spikes” recited at line 5. See, Office Action, page 2, lines 6-9. Applicants respectfully disagree and submit that the Patent Office appears to have overlooked

the Preliminary Amendment that Applicants filed on February 16, 2006. In the Preliminary Amendment, Claim 2 was amended to recite, in part, “a number of injection spikes.” See, Preliminary Amendment, page 45, Claim 2 (emphasis added). Additionally, the subject matter of Claim 2 has now been added to Claim 1 and refers to “a number of injection spikes,” instead of “the number of injection spikes.” As such, Applicants respectfully submit that the rejection of Claim 2 under 35 U.S.C. §112, second paragraph is rendered moot.

In the Office Action, Claim 1, 2 and 22-24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,148,717 to Lassota (“*Lassota*”). Applicants respectfully submit that *Lassota* is deficient with respect to the present claims.

Currently amended independent Claims 1 and 23 recite, in part, liquid being injected through the capsule in accordance with at least two different injection modes, wherein the two modes have between them at least one distinctive feature selected from the group consisting of an injection direction, a number of injection spikes, and a radial and/or depth position of injection into the capsule. The amendments do not add new matter. The amendment is supported in the Preliminary Amendment at, for example, page 5, [0013]; page 12, [0059]-[0064]. Thus, the presently claimed systems and methods relate principally to a device for preparing a beverage by injecting a quantity of water through a capsule containing a substance to be dissolved and/or to be extracted, comprising at least one water-injection system for introducing a quantity of water inside the capsule, characterized in that the injection system can be switched in order for a selection to be made between at least two different modes of wetting the substance so as to adapt wetting in accordance with the type of capsule and/or with the nature of the substance contained in the capsule. See, Preliminary Amendment, page 5, [0011]. In contrast, Applicants respectfully submit that *Lassota* fails to disclose each and every element of the present claims.

*Lassota* fails to disclose or suggest systems and methods, respectively, for injecting liquid through the capsule in accordance with at least two different injection modes, wherein the two modes have between them at least one distinctive feature selected from the group consisting of an injection direction, a number of injection spikes, and a radial and/or depth position of injection into the capsule as required, in part, by independent Claims 1 and 23. Instead, *Lassota* is specifically directed toward a beverage maker wherein the beverage liquid is automatically

and intermittently delivered into the beverage ingredient holder on a controlled basis during a dispensing period of a brewing cycle. More particularly, the brew cycle can be varied according to different dispensing time periods. See, *Lassota*, Abstract. *Lassota*, however, only has one position of injection and specifically states that “[t]he uniform flow dispenser head 38, in turn, delivers the intermittent streams 26 of hot water uniformly across the portion of an open top 40 of the uniform ingredient holder 24. The uniform flow ingredient holder 24 holds the ingredient in a laterally uniform cross-sectional, tubular form, preferably a cylindrical form, in order to obtain a uniform contact of the hot water with the beverage ingredient laterally across the surface of the beverage ingredient and most importantly across ensuing layers of the beverage ingredient through to the lowest layer of beverage ingredient at the bottom of the beverage ingredient layer.” See, *Lassota*, col. 6, lines 5-16 (emphasis added).

Thus, it is clear that the hot water of *Lassota* is injected laterally across the surface of the beverage and is allowed to diffused downward through the beverage ingredients. At no place in the disclosure does *Lassota* even suggest systems and methods, respectively, for injecting liquid through the capsule in accordance with at least two different injection modes, wherein the two modes have between them at least one distinctive feature selected from the group consisting of an injection direction, a number of injection spikes, and a radial and/or depth position of injection into the capsule as required, in part, by independent Claims 1 and 23.

The Patent Office asserts that “[i]n regards to claim 2, the depth at which the hot water is injected into the capsule can be varied from a surface wetting to a deep drenching of the substance.” See, Office Action, page 3, lines 1-2. However, Applicants respectfully disagree and submit that *Lassota* has only one position of injection. Indeed, the distinction in the wetting mode of *Lassota* is obtained by selecting or eventually changing the brew cycles during intermittent dispensing periods. See, *Lassota*, col. 6, lines 5-16. This is in direct contrast to the present claims, which require that the water-injection system can be actuated to modify the injection configuration in accordance with at least two possible modes. For at least the above-mentioned reasons, *Lassota* fails to disclose or suggest each and every element of the present claims.

Moreover, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v.*

*Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Lassota* fails to disclose each and every element of the present claims, *Lassota* fails to anticipate the present claims.

Accordingly, Applicants respectfully submit that the anticipation rejections of Claims 1-2 and 22-24 over *Lassota* be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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